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No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY-HOUSTON CHAPTER, INC.,

Petitioner.

v.

ROOMS WITH A VIEW, INC. a Texas Corporation,

Respondent,

and

PRIVATE NATIONAL MORTGAGE ASSOCIATION, INC., d/b/a PENNIE MAE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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Question Presented for Review

Is the 1997 amendment to Article XVI, 50(a)(5)(A) of the Texas Constitution, which requires the signature of both spouses to a document creating debt, preempted by the Equal Credit Opportunity Act which prohibits the requirement of both spouses signatures to a document creating debt but permits the requirement of both spouses signatures to a document utilized solely for the purpose of creating a lien or security interest?

List of All Parties

Rooms With a View, Inc., a Texas corporation
Plaintiff in trial court
Appellant in Texas Court of Appeals
Petitioner in Texas Supreme Court

Private National Mortgage Association, Inc.,
a Texas corporation
Defendant in trial court
Appellee in Texas Court of Appeals

National Association of the Remodeling
Industry-Houston Chapter, Inc.
Intervenor in trial court
Appellant in Texas Court of Appeals
Petitioner in Texas Supreme Court
Petitioner in the United States Supreme Court

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The trial court, Texas State District Court for the 345th Judicial District, granted summary judgment to Defendant Private National Mortgage Association, Inc. in cause number 98-09772 on April 1, 1999.

The opinion of the Texas Court of Appeals for the 3rd Judicial District, affirming the trial courts judgment in this case, was reported at 7 S.W.3d 840 (Tex.App. Austin 1999, pet den) (App. 3).

The Order of the Texas Supreme Court denying the Intervenor's Petition for Review was entered March 23, 2000. (App. 1).

Jurisdiction of This Court

Summary Judgments were entered in favor of the Defendant Private National Mortgage Association, Inc. and against Rooms With a View, Inc. and Intervenor National Association of the Remodeling Industry in cause number 98-09772 in the 345th Judicial District Court, Travis County, Texas on April 1 1999. The issue of federal preemption of Texas Constitution, Article XVI, §50 by the Equal Credit Opportunity Act, 15 U.S.C. §1691, was raised in the trial court in Intervenor-Petitioner's Motion for Summary Judgment. Defendant Private National Mortgage Association, Inc. filed a cross motion for summary judgment in the trial court

The decision of the Texas Court of Appeals for the 3rd Judicial District was entered December 9, 1999 and is reported at 7 S.W.3d 840 (Tex.App. Austin 1999 pet den)

The Petition for Review of Intervenor National Association of the Remodeling Industry-Houston Chapter, Inc. was denied by the Texas Supreme Court March 23, 2000. The Texas Supreme Court is the court of last resort for state court matters in the State of Texas.

This Honorable Court has jurisdiction of this matter because it involves the preemption of a State Constitution by a United States Statute pursuant to the supremacy clause of the Constitution of the United States, U.S.C.A. Const. Art. VI cl.2.

Constitutional and Statutory Provisions

U.S.C.A. Const. Art. VI cl.2.

> "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; ...shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or law of any State to the Contrary not withstanding."

Texas Constitution, Article XVI, §50, 1997 amendment which states:

> "..the work and materials are **contracted for in writing, with the consent of both spouses**, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead."

The Equal Credit Opportunity Act, 15 U.S.C. §1691 states:

> "It shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction: (1) on the basis of race, color, religion, national origin, sex or marital status.".

The Equal Credit Opportunity Act, 15 U.S.C.§ 1691(d), which states:

> "A request for the signature of both parties to a marriage for **the purpose of creating a valid lien,** passing clear title, waiving inchoate rights or assigning earnings shall not constitute discrimination under this sub-chapter."

Statement of the Case

In May, 1997, the Texas Legislature approved H.J.R. 31, an amendment to the Texas Constitution and placed that item on the November ballot as Proposition 8. It was described on the ballot as: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead." A portion of the amendment dealt with requirements for liens securing debts incurred for the construction of home improvements to the borrowers' homestead. The voters of Texas approved the amendment effective.

Subsequently, Rooms With a View, Inc. entered into a contract with a home-owner for the installation of certain home improvements to be financed by Private National Mortgage Association, Inc. A dispute with the lender arose regarding requirements of the amendment to the Texas Constitution. Litigation ensued in which the issue of federal preemption, specifically that of the Equal Credit Opportunity Act's limitation on spousal signatures and its conflict with the requirements of the Texas Constitutional.

Argument

The amendment to the Texas Constitution Article XVI, §50, adopted by the passage of Proposition 8, is preempted by the Equal Credit Opportunity Act. The pertinent portions of that amendment require the signatures of both spouses on a document which has the dual purpose of both evidencing debt incurred through an extension of credit and for the purpose of creating a lien against one's homestead even if only one spouse is the creditworthy borrower, which is expressly prohibited and thus preempted by the Equal Credit Opportunity Act.

The Constitution of the United States provides:

> "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; ...shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or law of any State to the Contrary not withstanding." U.S.C.A. Const. Art. VI cl.2.

> "It is unquestioned that Congress has the authority, in the exercise of its Article I powers, to preempt state laws by virtue of the Supremacy Clause of the Constitution." *First Gibraltar Bank, FSB v. Morales*, 19 F.3d 1032 (5th Cir. 1994).

There are three types of federal preemption: (1) where the Congress expressly so states; (2) where there is an actual conflict between federal and state law, including cases in which it is physically impossible for there to be compliance with both state and federal requirements; and, (3) where a federal legislative scheme is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. The signature requirements for both spouses is inconsistent with the prohibitions of the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq*. The Equal Credit Opportunity Act prohibits the requiring of a spouse's signature on the instruments involving the extension of credit when only one spouse seeks the extension of credit. The Act specifically excepts from this prohibition the requirement that a non-borrowing spouse execute the mortgage or security documents so as to provide the lender with a valid lien.

In all other states, if only one spouse seeks an extension of credit, which debt is to be secured by real property, the non-borrowing spouse can be compelled to execute the mortgage,

deed of trust or other security instrument in order to create a valid lien, while the borrowing spouse signs both the note and the security instrument.

The Texas Constitution Amendment in question requires execution of a third document by both spouses, a "contract for work and materials." While this document may create a lien, it is redundant to the Texas deed of trust which likewise creates a lien. The difference here, and the reason for the argument of preemption, is that the "contract for work and materials" is itself a document creating an extension of credit as defined by the Act and indicia of indebtedness the same as the note executed by the borrowing spouse. Thus, it is not merely a formality for the creation of a lien but a debt-creating document, and thus it is in violation of the Equal Credit Opportunity Act, and specifically preempted by the federal law.

The Texas Constitutional amendment requires for home improvement loans:

> "..the work and materials are **contracted for in writing, with the consent of both spouses**, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead."

The Equal Credit Opportunity Act states:

> "It shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction: (1) on the basis of race, color, religion, national origin, sex or marital status." 15 U.S.C. §1691.

The contract for work and materials is a basic contract with consideration flowing from both parties. The consideration flowing from the contractor is the construction of

improvements on the owner's home. The consideration flowing from the owner is payment of the contract price. If one contracts for improvements, the contract must by necessity provide for the owner's payment of the appropriate price to the contractor.

Assume that an owner of a home has sole title to the real property on which he or she resides and is creditworthy in his/her own individual right. However, if that owner is married, the amendment in question would require the owner s spouse to execute the contract for work and materials, thereby agreeing to make payment and incurring an extension of credit. In all other forty-nine states, the non-owning and non-borrowing spouse can be compelled to execute a mortgage, deed of trust or security instrument to create the lien but cannot be compelled to execute the note creating an extension of credit.

Under the requirements of that portion of the amendment in question which also permit home equity loans secured by one's homestead, a non-borrowing or non-owning spouse can be compelled to sign ***only*** the deed of trust and ***not*** the note which is indicia of indebtedness. That the hybrid contract for work and materials also creates a lien does not excuse or mitigate the fact that it also causes the signor to incur an extension of credit.

If the Equal Credit Opportunity Act was complied with in Texas, the sole-borrowing owner could sign the note; both spouses could sign the deed of trust and a valid lien could be created. Lenders are adequately protected by the exception found in 15 U.S.C.§ 1691(d), which states:

> "A request for the signature of both parties to a marriage for **the purpose of creating a valid lien,** passing clear title, waiving inchoate rights or assigning earnings shall not constitute discrimination under this sub-chapter."

The Fifth Circuit, in a case arising in Texas, has permitted the requirement of a spouses signature **solely** for the purpose of creating a valid lien which can be foreclosed and not for purposes of imposing debt on the non-borrowing spouse. See *Evans v. Centralfed Mortg. Co.*, 815 F.2d 348 (5th Cir. 1987).

Courts have held that requiring a spouse to sign indicia of indebtedness in addition to signing the security document is a violation of the Equal Credit Opportunity Act. In one case arising in Kansas, the bank required a wife to sign a promissory note, indicia of indebtedness. The court held that the wife's complaint stated a cause of action based on the Equal Credit Opportunity Act. See *Tease v. First Union Home Equity Bank*, 974 F.Supp. 1408 (D. Kan. 1997). In *Maritime American Bank of Bloomington, Illinois v. Lincoln*, 433 N.W.2d 709 (Iowa 1988) Lincoln and another man sought credit from the Maritime American Bank. The bank required the spouses of both men to sign not only the mortgage but the promissory note. The Court held this to be a violation of 15 U.S.C.§1691 not within the exception set forth in 15 U.S.C.§1691(d). Specifically, the Court referred to the regulation promulgated in 12 C.F.R. §202.7, which states:

> "...a creditor shall not require the signature of an applicant's spouse, or other person, other than a joint applicant on any credit instrument if applicant qualifies under the credit standards of the creditor for the amount and terms requested."

Conclusion

The import of the language in the Texas Constitutional Amendment, by requiring both spouses to execute a contract, the consideration for which is the extension of credit to both spouses, is directly in conflict with the provisions of the Equal Credit Opportunity Act. The regulations provide that federal law specifically preempts the state law in the case of a conflict.

> "A state law is deemed to be inconsistent with the requirements of this Act and this regulation and less protective of an applicant within the meaning of §705(f) of the Act to the extent that the law (1) requires or permits a practice or act prohibited by this Act or this regulation." **12 C.F.R. §202.11**

Therefore, the amendment to the Texas Constitution must fail as preempted by federal law.

Dated: June 16, 2000

Respectfully submitted,
JAMES COOPER-HILL, P.C.

\s\

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THE SUPREME COURT OF TEXAS
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RE: Case Number 00-0059
Court of Appeals Number: 03-99-00231-CV
Trial Court Number 98-09772

Style: ROOMS WITH A VIEW, INC., a Texas corporation, NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY-HOUSTON CHAPTER, INC.

v.

PRIVATE NATIONAL MORTGAGE ASSOCIATION, INC., d/b/a PENNIE MAE

Entered March 23, 2000

Dear Counsel:

Today, the Supreme Court of Texas denied both petitions for review in the above numbered and styled case.

Sincerely,
John T. Adams, Clerk

/s/_____
Blanca E. Morin, Deputy

cc: Ms. Diane O'Neal, Clerk
Ms. Amalia Rodriguez-Mendoza

TEXAS COURT OF APPEALS, THIRD DISTRICT,
AT AUSTIN
NO. 03-99-00231-CV

Rooms With a View, Inc., a Texas Corporation, National Association of the Remodeling Industry-Houston Chapter, Inc.,
Appellants
v.
Private National Mortgage Association, Inc., d/b/a Pennie Mae, Appellee

FROM THE DISTRICT COURT OF
TRAVIS COUNTY,
345TH JUDICIAL DISTRICT NO. 98-09772,
HONORABLE PETE LOWRY, JUDGE PRESIDING

Entered December 9, 1999

Rooms With A View, Inc. (Rooms), a home remodeler, sued appellee Private National Mortgage Association, Inc., d/b/a Pennie Mae (Pennie Mae) for declaratory relief, and the National Association of the Remodeling Industry-Houston Chapter, Inc. (NARI) intervened. Rooms and Pennie Mae filed motions for summary judgment; NARI filed a brief in support of Rooms' motion. The trial court denied Rooms' motion and granted final summary judgment in favor of Pennie Mae. Rooms and NARI (collectively Rooms) filed this appeal. We will overrule Rooms' issues on appeal and affirm the trial court's grant of summary judgment.

Background

In November 1997, Texas voters approved Proposition 8, which amended Article XVI, Section 50 of the Texas Constitution to allow homeowners voluntarily to encumber

their homesteads with liens in exchange for extensions of credit, i.e; "home equity loans."[1] Proposition 8 also amended

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[1] In relevant part, Proposition 8 amended Section 50 of the constitution to read as follows: Sec. 50: (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money . . .
(2) the taxes due thereon;
(3) an owelty of partition imposed against the entirety of the property .
(4) the refinance of a lien against a homestead . . .
(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing
improvements thereon if:

(A) the work and material are contracted for in writing, with the *consent of both spouses* . . . in the same manner as is required in making a sale and conveyance of the homestead;
(B) *the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material . . . ;*
(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after
the execution of the contract by all parties . . . ; and
(D) *the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;*

the constitution's provisions for imposing contractors' or mechanics' liens.

In 1998, Charles and Rebecca Barnett contacted Rooms about adding a glass-enclosed patio cover to their home. The Barnetts filled out a loan application with Pennie Mae on July 30, 1998, and on July 31, Pennie Mae indicated it would approve the loan. On August 12, twelve days after the Barnetts completed the loan application, they signed a contract for Rooms to install the patio cover for $8,085. The contract was signed at the offices of All American Title Services, a title abstractor that Rooms and the Barnetts believed to be a "title company" under the meaning of Proposition 8. On August 19, Pennie Mae declined to close the loan on the grounds that All American Title Services was an abstract off-ice, not a title company as required by Proposition 8. Rooms sued Pennie Mae, seeking a declaration that Proposition 8 was unconstitutional.

Summary Judgment Standard of Review

Summary judgment is properly granted only when a movant establishes there are no genuine issues of material fact to be decided and that it is entitled to judgment as a matter of

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(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse; . or

(7) a reverse mortgage.

Tex. Const. art. XVI, § 50(a) (emphasis added); *see also* Tex. H.J. Res. 31, 75th Leg., R.S., 1997 Gen. Laws 6739 (text of proposed amendment as passed by legislature).

law. *See* Tex. R. Civ. P. 166a(c); *Memorial Med. Ctr. v. Howard,* 975 S.W. 2d 691, 692 (Tex. App.-Austin 1998, pet. denied). In reviewing the grant of summary judgment, we view the evidence in the light most favorable to the non-movant and make every reasonable inference and resolve all doubts in favor of the non-movant. *See Nixon v. Mr. Property Management Co., 690* S.W.2d 546, 548-49 (Tex. 1985); *Howard,* 975 S.W.2d at 693. When the trial court's order granting summary judgment does not specify the grounds relied upon, we will affirm the judgment if it is supported by any Of the grounds put forth by the movant. *See Bradley v. State ex rel. White,* 990 S.W.2d 245, 247 (Tex. 1999); *Howard,* 957 S.W.2d at 693. When the trial court grants one party's motion; for summary judgment and denies the other,, we review both motions, and if we find the trial court erred, we, will reverse and render the judgment the trial court should have rendered. *See Bradley,* 990 S.W.2d at 247; *Howard,* 957 S.W.2d at 693.

In reviewing both motions and all accompanying summary-judgment evidence, we will view the evidence and resolve all doubts in favor of Rooms. We will overturn the trial court's judgment in favor of Pennie Mae only if it is unsupported by any of the grounds put forth in its motion.' *See Bradley,* 990 S.W.2d at 247; *Howard,* 957 S.W.2d --@t 693.

Discussion

I. Unconstitutionally vague

Rooms argues that the term "title company" in Proposition 8 is unconstitutionally vague in governing where home improvement contracts must be executed. We disagree.

In interpreting a constitutional provision. we start with the text of the provision. *See Republican Party of Texas v. Dietz,* 940 S.W.2d 86, 89 (Tex. 1997); *Mellon Serv. Co. v. Touche Ross & Co.,* 946 S.W.2d 862, 867 (Tex. App--Houston [14th Dist.] 1997, no writ). We use the same guidelines in

interpreting constitutional provisions as we do in Interpreting statutes. *See Stine v. State,* 908 S.W.2d 429, 431 (Tex. Crim. App. 1995); *Mellon Serv. Co.,* 946 S.W.2d at 867. If the literal text is unclear or could lead to an absurd result, we may look outside of the language for aid in interpretation. *See Mellon Serv. Co.,* 946 S. W.2d at 867. We consider the purpose of the provision, the intent of the provision's drafters, and the context in which it was written, including the legislatures practical ' interpretation and construction of the ambiguous term. *See Diet7,* 940 S.W.2d at 89; *Mellon Serv. Co..* 946 S.W.2d at 867. We may also consider dictionary definitions. earlier court opinions, and interpretations of similar provisions from other jurisdictions. *See Diet7,* 940 S.W.2d at 89; *Mellon Serv. Co..* 946 S.W.2d at 867-68.

We begin with the presumption that the legislature acted constitutionally in enacting the provision. *See United States v. National Dairy Prod. Corp.,* 372 U.S. 29, 32 (1963); *Travelers Indem. Co. v. Fuller,* 892 S.W.2d 848, 850 (Tex. 1995). The party challenging a statute or constitutional provision bears the burden of establishing its unconstitutionality. See *Travelers Indem. Co.,* 892 S.W. 2d at 850.

A statute is unconstitutionally vague if it (1) does not give fair notice of what conduct may be punished, and (2) invites arbitrary and discriminatory enforcement by its lack of guidance for those charged with its enforcement. *See Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498 (1982); *Commission for Lawyer Discipline v. Benton, 980* S.W.2d 425, 437 (Tex. 1998). A statute is not automatically void for vagueness simply because it is difficult to determine whether certain "marginal" acts fall within its language. *See Pennington v. Singleton,* 606 S.W.2d 682, 689 (Tex. 1980). Nor is there a constitutional requirement that a statute define all words or terms used. *See Garay v. State,* 940 S.W.2d 211, 219 (Tex. App.-Houston (Ist Dist.] 1997, pet. refd). Courts recognize the myriad of factual situations that may arise and

allow statutes to be worded with flexibility, provided the public has fair notice of what is required or prohibited. *See Pennington,* 606 S.W.2d at 689. In the case of civil or regulatory statutes, no more than a reasonable degree of certainty is required. *See id.*

Applying these principles, we, reject Rooms' claim that the absence of a definition of 'title company" renders Proposition 8 void for vagueness.[2] Instead, we seek to dispel any uncertainty by defining "title company" as used in Proposition 8.

Texas case law makes frequent use of the ten-n "title company," but does not clearly distinguish between "title

[2] Rooms argues 'title company' can be construed in at least three ways, to mean companies providing tide insurance, title abstracts, or even auto or boat titles. We think it obvious that the legislature did not intend title company in this context to refer to companies providing title for automobiles, sea craft, or other items of non-real property.

company" and 'title insurance company."[3] A "title company" may be an agent for a title insurance company and may solicit insurance, collect premiums, issue policies, and perform other related services, such as title searches and surveys. *See. Cameron County Sav.Ass'n v. Stewart Title Guar. Co.,* 819 S.W.2d 600, 602 (Tex. App.-Corpus Christi 1991, writ ref'd n.r.e.).[4]

Courts and the insurance industry also use "title company" interchangeably with "title insurance company." *See,*

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[3] ' Under the Texas Insurance Code, a title insurance company is a company performing the business of insuring title to real property. *See* Tex. Ins. Code Ann. art. 9.01(c) (West 1981 & Supp. 1999). A title insurance agent (1) owns, participates in the joint operation of, or leases and controls an abstract plant, and (2) is authorized by a title insurance company to sell insurance, collect premiums, and issue policies. *See id.* art. 9.01(0 (West 1981). A "direct operation" is a title insurance company that owns, leases and operates, or jointly operates an abstract plant itself, rather than using an agent. *See id.* art. 9.01(q), art. 9.36A (West. Supp. 1999). Black's Law Dictionary defines a title company as a "[c]ompany that examines real estate titles and, commonly, issues title insurance." *Blacks Law Dictionary* 1487 (6th ed. 1990). A title guaranty company is a business that searches title to see if "any defects or encumbrances are recorded and which gives the buyer of the property or the mortgagee a guaranty of the title." Id. Abstract of title is a "condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised.' Id. at 10.

[4] ' *See also* 9 John Alan Appleman and Jean Appleman, *Insurance Law & Practice §* 5201, at 15 (rev. ed. 198 1) ("often title insurance companies do not receive the entire fee arising from a real property transaction. In instances where they maintain the histories of title transfers in that area, usually they make the entire fide search as well as issuing a policy asserting merchantability of the title .... In some states, moreover, there may be title companies, or 'agents,' as the title insurer terms them, which may assume the entire responsibility,' and which pay only a small fee for issuance of tht-policy.").

e.g., J.H. Lacy v. Ticor Title Ins. Co., 794 S.W.2d 781, 783 (Tex. App.-Dallas 1990. writ denied); Jupe *v. City of Schertz;* 604 S. W.2d 405, 406 (Tex. Civ. App.-San Antonio 1980, writ ref'd n.r.e.); Appleman § 5205, at 26 *("When a title company insures the owner's title to property,"* it insures the title and assumes liability for title defects) (emphasis added).[5]

While "title company' and "title insurance company- are interchangeable, courts generally distinguish them from companies doing only title abstractions. *See, e.g., Martinka v. Commonwealth Land Title Ins. Co.*. 836 S.W.2d 773, 777 (Tex. App.-Houston [Ist Dist.] 1992, writ denied); *Stewart Title Guar. Co. v. Cheatham,* 764 S.W.2d 315, 319 (Tex. App.-Texarkana 1988, writ denied).. An abstractor compiles. data, allowing an examiner to evaluate the title's legal, status. *See Tamburine v. Center Sav. Assn,* 583 S.W.2d 942, 947 (Tex. Civ. App.-Tyler 1979, writ ref d n.r.e.). A tide insurer guarantees the title's status and insures owners against possible title defects. *See Martinka,* 836 S.W.2d at 777.

A company calling itself an abstract company may go beyond performing title abstractions by also acting as an agent for a title insurer, issuing policies or doing other related activities. *See, e.g., Stewart Title Guar. Co. v. City Nat'l Bank,* 796 S.W.2d 308, 310 (Tex. App.-Eastland 1990, no writ);

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[5] Other states also use "title company"to refer to either the title insurer itself or the insurer's agent. *See, e.g., Greenberg v. Stewart Title Guar. Co.*, 492 N. W. 2d 147,152 (Wis. 1992) (both title insurer and its agents referred to as title company and held not liable for title defects unless they assumed responsibility for searching fide); *Shotwell v. Transamerica Title Ins. Co.*, 558 P.2d 1359, 1361 (Wash. Ct. App. 1976) (title insurance company called both title company and title insurance company); *J.H. Trisdale, Inc. v. Shasta County Title Co.*, 304 P.2d 832, 834 (Cal. Ct. App. 1956) (title insurer's agent referred to as title company).

Lathen v. Richey, 772 S.W.2d 249, 252 (Tex. App.-Dallas 1989, writ denied).[6]

We note that while Proposition 8's legislative history does not discuss the meaning of 'title company," the legislative history for Committee Substitute for House Bill 740 ('CSHB 740"), titled "An Act Relating to Mechanics', Contractors', and Materialmen's Liens; Providing Penalties,' provides some insight. *See* Act of May 19, 1997, 75th Leg., R.S., ch. 526, 1997 Tex. Gen. Laws 1880. Although CSHB 740 did not concern home equity loans, it concerned mechanics' liens, an issue related to those addressed by Proposition 8, and it passed during the same legislative session as Proposition 8 in the spring of 1997. The Committee of Business and Industry's report on CSHB 740 says, "[Al party acquiring an interest in the property (a purchaser or lender) or *a party insuring title to the property (a title company)* may rely on the filing of the bond and notice with regard to the release of the lien." House Comm. on Bus. & Indus., Bill Is Analysis, Tex. C.S.H.B. 740, 75th Leg., R.S. (1997) (emphasis added). We recognize this report did not address Proposition 8; nevertheless, we think it useful in gleaning- the legislature's intended meaning of "title company," a term used in both pieces of legislation enacted during the same session and relating to liens against homesteads. Nothing suggests the legislature intended "title company" to refer to an entity performing only title abstractions.

We hold that "title company" as used in Proposition 8 and amended Section 50 means a title insurer or an agent of a title insurer. We overrule Rooms' argument that Proposition 8 is void for vagueness.

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[6] We have been unable to find a case in which a true abstract company, doing only title abstraction and not acting as an insurer's agent, was referred to as a title company.

II. Right to travel

Rooms argues that Proposition 8 violates the constitutional right to travel granted to citizens of the United States, or rather, a corollary right not to travel. We disagree.

Citizens of the United States have the right to travel to and live in any state for lawful purposes. *See* U.S. Const. art. IV, § 2, amend. V and XIV; *Saenz v. Roe,* 119 S. Ct. 1518, 1525 (1999); *Owens Corning-v. Carter,* 997 S.W.2d 560, 579 (Tex. 1999). This right consists of three elements-the right to enter and leave a state, the right "to be treated as a welcome visitor rather than an unfriendly alien" when in a state of - which one is not a citizen, and the right, if one decides to move to and take up residence in another state, to be treated as any other citizen of that state. *See Saenz,* 119 S. Ct. at 1525; *Owens Corning,* 997 S.W.2d at 579. Rooms recognizes Proposition 8 does not impact any of these elements, and instead argues the right to travel gives rise to a corollary "right to remain home. "Rooms does not cite any authority in support of the right not to travel but states that requiring homeowners to travel away from their homes violates this night. Rooms argues Proposition 8 unconstitutionally bars homeowners from traveling to locations of their choosing, namely, contractors' offices. We disagree with both claims.

We are unable to find any case law or commentary to support this alleged right not to travel. Citizens are required to travel outside of their homes to specified locations for many legal reasons, such as renewing a driver's license or obtaining a marriage license, as well as to meet many day-to-day needs. We recognize that, in this age of on-line shopping, chat rooms, and. in-home exercise equipment, it is often possible to satisfy many basic (and not-so-basic) desires without leaving the comfort of one's home. However, we are reluctant to declare that citizens of Texas have a constitutional right to have any and all comforts, necessities, or transactions made available to them within their homes or at locations of their choosing.

Proposition 8, by requiring contractors and homeowners to sign contracts in locations other than their homes, does not violate any constitutional rights.[7]

Nor is it up to this Court to decide as Rooms urges that the legislature was overly paternalistic in imposing this protection. Texas courts have long held that homestead rights in Texas are "founded upon principles of the soundest policy." *Inwood N. Homeowners'Ass'n v. Harris,* 736 S.W.2d 632, 634-35 (Tex. 1987) *(citing Franklin v. Coffee,* 18 Tex. 413, 415 (1857)). Homestead rights are intended to protect Texas families from destitution and homelessness and encourage feelings of "Independence which are so essential to the maintenance of free institutions." *Harris,* 736 S.W.2d at 634-35. Courts should liberally construe homestead provisions in a mariner that promotes that intended purpose. *See Harris,* 736 S.W.2d at 634-35-1 *Sanchez v. Telles,* 960 S.W.2d 762, 769 (Tex. App.-El Paso 1997, pet. denied). The legislature apparently believed it worthwhile to require that homestead liens be transacted away from the homestead, perhaps to lessen the danger of undue influence or duress, or to prevent an unscrupulous salesman from persuading a homeowner to impose such a lien without a full understanding of all the implications. We will not second-guess that decision.

We hold Proposition 8 and Section 50 of the constitution as amended do not violate the First Amendment right to travel, and we overrule Rooms' argument.

III. Federal preemption and interference with interstate commerce

Rooms argues Proposition 8 violates the Commerce Clause[8] because it interferes with interstate commerce. It

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[7] Rooms lacks standing to raise complaints on behalf of bedridden home owners required to leave their homes to sign home improvement contracts.

[8] U.S. Const. art. 1, § 8, cl. 3.

further claims Proposition 8 is preempted by federal law in the following ways[9] (1) the twelve-day waiting period imposed is nonsensical;"[10] (2) the twelve-day waiting period and three-day. cancellation, period conflict with andare. Preempted by the Truth In Lending Act ("TILA");"[11] and (3) the provision requiring that both spouses sign a home improvement contract violates the Equal Credit Opportunity Act ("ECOA").[12] We disagree.

A. Preemption standard of review

There is a presumption against federal preemption of state actions. *See Cipollone v. Liggett Group, Inc.*, 505 U.S.

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[9] Rooms' brief simply asserts that Proposition 8 is preempted because "the field has already been occupied by Congress, utilizing its power to regulate commerce" without explaining by which federal law. NARI's brief references TILA and ECOA.

[10] " Rooms claims the waiting period is nonsensical as applied to home owners who do not want to take out a home improvement loan with a third-party lender. However, the constitution provides the waiting period between the signing of the contract and "application for any extension of credit for the work and material." Tex. Const. art XVI, § 50 (emphasis added). If a home owner does not seek any extension of credit, a mechanic's lien is unnecessary. Obtaining a mechanic's lien implies the contractor itself is extending credit to the home owner, even if the home owner does not apply for a third-party loan. If the contractor does not extend credit in the form of billing the home owner as work is completed, and instead the home owner pays for the improvements up front, there is no need to obtain a lien against the property. When a contractor extends credit, section 50 requires that the home owner completes some form of credit application with the contractor and then waits twelve days to sign the contract.

[11] " 15 U.S.C.A. §§ 1601-1667e (West 1998).

[12] 15 U.S.C.A. §§1691-1691f (West 1998).

504, 516 (1992); *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 249 (Tex. 1994). In the absence of express federal command, a state statute is preempted only when federal law so thoroughly occupies the subject field as to indicate Congress left no room for further state action or when a federal law actually conflicts with the state statute. *See Cipollone*, 505 U.S. at 516; *Moore*, 889 S.W.2d at 248-49. If a federal statute contains an express preemption clause, we look to the language of that clause to determine Congress's intent with respect to the states' authority to legislate on related matters. *See Cipollone*, 505 U.S. at 517. We will not hold that federal law preempts a state statute unless the subject matter leaves no other conclusion or it is clear that Congress so intended. *See Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

B. Interference with interstate commerce

Under the Commerce Clause, Congress has the power to regulate interstate commerce. *See* U.S. Const. art. 1, § 8, cl. 3. However, in the absence of conflicting federal legislation, states retain broad power to regulate matters of local concern. *See Great Atl. & Pac. Tea Co. v. Cottrell*, 424 U.S. 366, 371 (1976). A state may enact legislation that impacts but does not impose clearly excessive burdens on commerce if the statute is evenhanded, does not discriminate against interstate commerce, and safeguards an obvious local interest, and if the local interest outweighs any national interest in avoiding the restriction. *See id.* at 371-72. Rooms asserts Proposition 8 interferes with interstate commerce but does not specify any federal legislation that conflicts with its provisions. Any slight or incidental impact Proposition 8 may have on interstate commerce is far from excessive. We overrule Rooms' argument that Proposition 8 interferes with interstate commerce.

C. *Truth In Lending Act (TILA)*

Rooms argues federal law preempts state law because the three-day cancellation period required by Proposition 8 conflicts with section 1635 of TILA, which provides that a consumer-obligor to a consumer credit transaction involving a security interest in the obligor's homestead has three days after completing the transaction to rescind it without penalty. *See 15* U.S.C.A. § 1635(a), (b) (West 1998). Rooms argues Proposition 8 'overlays a second three-day right to cancel." The three-day period granted by. Proposition 8 runs concurrently with TILA's cancellation period, and does not conflict with it. We overrule Rooms' argument as it relates to the cancellation period.

Rooms also argues the twelve-day waiting period conflicts with the three-day cancellation period of section 1635 of TILA. We disagree. TILA contains a preemption clause, section 1610, tided 'Effect on other laws," which states section 1632(c) and sections 1637(c), (d), (e), and (o supersede state laws relating to the disclosure of credit application information that is subject to sections 1637(c) or 1637(d). *See* 15 U.S.C.A. § 1610(e) (West 1998). Other than those specified preemptions, TILA does not "annul, alter, or affect in any manner" related state laws, unless those laws are inconsistent with TILA's provisions, and then only as far as the inconsistency. *See id.* §1610(a), (b), (d). This makes it clear that Congress, in enacting TILA, did not intend to preempt every state law that addresses a related subject, but only those in direct conflict with TILA. The twelve-day waiting period does not directly conflict with TILA and is not preempted. We overrule Rooms' argument.

D. *Equal Credit Opportunity Act (ECOA)*

ECOA makes it unlawful for a creditor to discriminate against an applicant for credit on the basis of race, color,

religion, national origin, sex, age, or marital status. *See 15* U.S.C.A. § 1691(a)(1) (West 1998). Rooms mistakenly argues that Proposition 8's requirement that both spouses sign a home improvement contract to create a valid mechanics' lien against the homestead constitutes discrimination on the basis of marital status. However, section 169ld(a) specifically states that '[a] request for the signature of both parties to a marriage for the purpose of creating a valid lien [or] passing- clear title . . . shall not constitute discrimination under this subchapter: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant." Id. § 169ld(a).

Homestead rights in Texas are intended to protect citizens from losing their homes and to foster home ownership and independence; statutes relating to homestead rights are to be liberally construed to protect homesteads. *See Harris,* 736 S.W.2d at 634-35. Each spouse in a marriage has a separate and undivided possessory interest in their homestead property. *See* Tex. Const. art. XVI, § *50; United States v. Rodgers,* 461 U.S. 677, 685 (1983). Homestead rights vest in both spouses regardless of whether the property is owned by both spouses, by one spouse separately, or even by a third party. *See Rodgers,* 461 U.S. at 685; *Farmers' & Mechanics' Trust Co. v. Perry,* 56 S.W.2d 501, 502 (Tex. Civ. App.-Amarillo 1933, writ ref'd). It has long been the rule in Texas that a lien against a homestead is invalid unless agreed to by both spouses, except in very limited situations. *See Uvalde Rock Asphalt Co. v. Hightower,* 166 S.W. 2d 681, 683 (Tex. Comm'n App. 1942, judgm't adopted).

Proposition 8's requirement that both spouses sign the home improvement contract ensures the creditor can create a valid lien against the homestead; a lien consented to by only one spouse would fail, and the creditor would be left without recourse against the homestead. *See id.* This requirement does not discriminate on the basis of marital status under ECOA

because it has no bearing on the creditworthiness of either spouse but simply ensures the creditor receives an actionable lien a against the homestead in-exchange for the extension of credit. *See Evans* v, *Centralfed Mortgage Co.,* 815 F.2d 348, 349-50 (5th Cir. 1987). Requiring both spouses' signatures does not conflict with ECOA, nor is it specifically preempted by section 1610. We overrule Rooms' issue on appeal.

IV. Insufficient ballot language

Rooms contends Proposition 8 is unconstitutional because the language used to describe it on the November 1997 ballot did not describe proposed changes to the constitution's provisions governing mechanics' liens. We disagree and will overrule Rooms' contentions.13"

To amend the Texas Constitution, three steps must occur: (1) the proposed amendment must be approved by two-thirds of the legislature; (2) the ballot language and a brief explanation of the proposed amendment must be published in designated newspapers and posted at each county courthouse; and (3) the proposed amendment must be submitted to and approved by the voters by including its ballot language on the election ballot. *See* Tex. Const. art. XVII, § 1; Tex. Elec. Code Ann. § 274.001(b) (West 1986). A proposed amendment's ballot language is constitutionally sufficient if it

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[13] Rooms did not bring an election contest under section 233.014 of the Election Code, which provides that "[a]ny question relating to the validity or outcome of a constitutional amendment election may be raised in an election contest. A contest is the exclusive method for adjudicating such questions.' Tex. Elec. Code Ann. § 233.014(g) (West 1986). Such a contest must be raised by filing a petition before the completion of the final official canvass. *See id.* § 233.014(b). Because Rooms did not file a contestant's petition. as far as the evidence indicates, it should have no standing to attack the validity of the ballot language. However, Pennie Mae has not raised this issue in its briefings before this Court or the trial court below.

identifies the amendment, showing its character and scope, that is, its intent, Import, subject matter, or theme. *See* Tex. Elec. Code Ann. § 274,001(b)*Whiteside v. Brown,* 214 S.W.2d 844, 851 (Tex. Civ. App.-Austin 1948, writ dism'd). It is not necessary to include all relevant details or to print the entire proposed amendment on the ballot. *See Hardy v. Hannah,* 849 S.W.2d 355, 358 (Tex. App.-Austin 1992. writ denied). Instead, voters are presumed to be familiar with the proposed amendment's actual content before entering the voting booth, and the ballot language need only give "fair notice to the voter of average intelligence by directing him to the amendment so that he can discern its identity and distinguish it from other propositions on the ballot." Id.

The 1997 ballot language describing Proposition 8 read as follows: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead." No other proposed constitutional amendments on the ballot concerned home equity loans or homestead liens. The major change proposed was the allowance of home equity loans against homestead property; minor changes need not have been included on the ballot. *See id.* at 358; *see also* Caption for Enrolled Version of H.J.R. 31 ("A joint resolution proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit."). We presume the voters knew of the changes proposed to the method of imposing a mechanics' lien. *See Hardy,* 849 S. W.2d at 358. The language used to describe Proposition 8 on the ballot fairly expressed its scope and character and set it apa.t from other propositions. *See id.* We overrule Rooms' issue on appeal.

Conclusion

Having overruled all of Rooms' issues on appeal, we affirm the summary judgment in favor of Pennie Mae.

/s/_____
Bea Ann Smith, Justice

Before Chief Justice Aboussie, Justices B.A. Smith and Yeakel
Affirmed
Filed: December 9, 1999
Publish

Text of amendment to Art. XVI, §50, Texas Constitution

A JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended to read as follows:

Sec. 50 (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2)[,] the taxes due thereon;

(3)[,] an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4)[,] the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5)[, or for] work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) [and in this last case only when] the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without

penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and materials, an attorney at law, or a title company-,

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability

against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(l)-(a)(5) of this section;

(L) is scheduled to be repaid in substantially equal successive monthly installments beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of scheduled installment;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii)the first anniversary of the closing

date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(0) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the Following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; or

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien

securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; and

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply; or

(7) a reverse mortgage.

(b) An [nor may the] owner or claimant of the property claimed as homestead may not [, if married,] sell or abandon the homestead without the consent of each owner and the [other] spouse

of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, [except for a debt described by this section,] whether such mortgage, [or] trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(i)-(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for

reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.

SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY

THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OW'NER!S SPOUSE-,

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD-,

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED

FROM TIME TO TIME

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE-,

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PAY FOR THE PRODUCTION OF MILK; PRIMARILY

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAJR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME-

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU

RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN *WITHIN THE PAST YEAR, A NEW* LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(0) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION- AND

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE-,

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN **CLOSES-,** AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS."

If the discussions with the borrower are conducted primarily

in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if;

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6)- and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien

securing an extension of credit described by Subsection (a)(6) of
This section was a valid lien securing the extension of credit with
homestead property if.

(1) the security instruments securing the extension of
credit contain a disclosure that the extension of credit secured by
the lien was the type of credit defined by Section 50(a)(6),
Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property
pursuant to or after the foreclosure of the voluntary lien- and

(3) the purchaser is not the lender or assignee under
the extension of credit.

(j)Subsection (a)(6) and Subsections (e)-(i) of this
subsection are not severable, and none of those provisions would have
been enacted without the others. If any of those provisions are
held to be preempted by the laws of the United States, all of those
provisions are invalid. This subsection shall not apply to any
lien or extension of credit made after January 1, 1998, and before
the date any provision under Subsection (a)(6) or Subsections
(e)-(I) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse,

(2) that is made to a person who is or whose spouse is 55 years or older-,

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower based on the equity in a borrower's homestead-,

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made-

(6) that requires no payment of principal or interest until;

(A) the homestead property securing the loan is sold or other-wise transferred- or

(B) all borrowers cease occupying the homestead property as a principal residence for more than 180 consecutive days and the location of the homestead property owner is unknown to the lender;

(7) that provides that if the lender falls to make

loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents, the lender forfeits all principal and interest of the reverse mortgage; and

(8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded

during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds-,

(2)a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents'.

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest,

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest- and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse

mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made at regular intervals according to a plan established by the original loan agreement.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001. of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7)

of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

SECTION 2. The following temporary provision is added to the Texas Constitution'.

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary consensual encumbrance on homestead property.

(b) The constitutional amendment takes effect January 1, 1998.

(c) This temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The amendment to the Texas Constitution expanding the types of liens for home equity loans that a lender, with the homeowner's consent, may place against a homestead."

President of the Senate

Speaker of the House

I certify that H.J.R. No. 31 was passed by the House on May 9, 1997, by the following vote: Yeas 112, Nays 36, 1 present, not voting; and that the House concurred in Senate amendments to H.J.R. No. 31 on May 29, 1997, by the following vote: Yeas 116, Nays 25, 2 present, not voting and that the House adopted H.C.R. No. 326 authorizing certain corrections in H.J.R. No. 31 on May 31, 1997, by a non-record vote.

/s/_____

Chief Clerk of the House

I certify that H.J.R. No. 31 was passed by the Senate, with amendments, on May 26, 1997, by the following vote: Yeas 22, Nays 7, 2 present, not voting and that the Senate adopted H.C.R. No. 326 authorizing certain corrections in H.J.R. No. 31 on June 1, 1997, by a viva-voce vote.

/s/_____
Secretary of the Senate

RECEIVED: _____
Date

/s/
Secretary of State